

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LINDA DiMEGLIO,

Plaintiff,

07 CIV 3324 (SCR)

- against -

VILLAGE OF BRIARCLIFF MANOR,

Defendant.

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NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Daniel L. Adams, Esq., sworn to on the 22nd day of August 2007, and the Memorandum of Law in Support of the Defendant's Motion to Dismiss, the defendant, Village of Briarcliff Manor, by and through its attorneys, RUTHERFORD & CHRISTIE, LLP, will move this Honorable Court on a date time to be decided by this Honorable Court:

- 1) For an Order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing this action because the complain fails to state a claim upon which relief can be granted against the defendant.

2) For such other and further relief as this Court deems just and proper.

Dated: New York, New York

August 22, 2007

Respectfully submitted,

RUTHERFORD & CHRISTIE, LLP

By: _____

Daniel L. Adams (DA 6891)
Attorneys for Defendant,
VILLAGE OF BRIARCLIFF MANOR
300 East 42nd Street, 18th Floor
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TO: BAKER, LESHKO, SALINE & BLOSSER, LLP

Attorneys for Plaintiff

One North Lexington Avenue

White Plains, New York 10601

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Attention: Mitchell J. Baker (MB-4339)

UNITED STATES DISTRICT COURT
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07 CIV 3324 (SCR)

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**DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION
TO DISMISS**

DANIEL L. ADAMS, an attorney duly admitted to practice law in the United States District Court for the Southern District of New York, hereby deposes and says subject to the penalties of perjury:

1. I am associated with the law firm of RUTHERFORD & CHRISTIE, LLP, attorneys for the defendant, Village of Briarcliff Manor (hereinafter the "Village" or the "defendant"). I am fully familiar with the facts and circumstances of this matter based on my review of the file maintained by my office in defense of this litigation.

2. This Declaration is submitted in support of the defendant's Motion to Dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, seeking a dismissal of the plaintiff's Complaint against the defendant in its entirety, with prejudice, and for such other and further relief as this Court deems just and proper.

3. The plaintiff commenced this lawsuit against the defendant by filing a Summons and Complaint on or about April 26, 2007. Annexed hereto as Exhibit "A" is a copy of the plaintiff's Summons and Complaint.

4. The plaintiff has been a police officer with the Village's Police Department for

approximately five (5) years. See Exhibit "A", at ¶¶ 6-7.

5. The plaintiff claims that on or about December 28, 2005, while pregnant, she sustained injuries to her left knee and back while on her job as a police officer. On or about January 4, 2006, the plaintiff filed an application for disability benefits pursuant to New York General Municipal Law § 207-c (hereinafter "GML § 207-c"). On or about January 11, 2006, the Village denied the plaintiff's request for disability benefits under § 207-c. See Exhibit "A", at ¶¶ 11-18.

6. On or about January 17, 2006, the plaintiff submitted a request to appeal the determination denying her benefits under GML § 207-c. See Exhibit "A", at ¶ 19.

7. On or about July 31, 2006, the Arbitrator who heard the appeal issued a decision denying the plaintiff benefits under GML § 207-c. Annexed hereto as Exhibit "B" is a copy of the Arbitrator's Opinion and Award.

8. Prior to the plaintiff's request for benefits under GML § 207-c, Briarcliff Manor police officer Dennis Waldron was granted benefits under GML § 207-c. See Exhibit "A", at ¶¶ 22-27.

9. The plaintiff filed a charge with the Equal Employment Opportunity Commission (hereinafter "EEOC") on October 26, 2006, alleging sex discrimination. Annexed hereto as Exhibit "C" is a copy of the plaintiff's EEOC charge.

10. On or about November 27, 2006, the plaintiff commenced a proceeding pursuant to CPLR Article 78 in the Supreme Court, Westchester County under Index Number 23186/06, challenging the determination of the Arbitrator and seeking a judgment that she was eligible for benefits under GML § 207-c. The plaintiff's Article 78 proceeding is still pending. Annexed hereto as Exhibit "D" is a copy of the plaintiff's Article 78 Petition.

11. On or about April 19, 2007 the EEOC issued a "right to sue letter". See Exhibit "A", at ¶ 30.

12. In the instant action the plaintiff is seeking compensatory and exemplary damages for the alleged violation of her rights under Title VII of the Civil Rights Act of 1964. In addition, the plaintiff is seeking attorneys' fees pursuant to 28 U.S.C. § 1988. See Exhibit "A".

13. Specifically, the plaintiff alleges the defendant discriminated against her on the because of her sex when denying her disability benefits under General Municipal Law § 207-c. See Exhibit "A", at ¶¶ 31-36.

14. As is more fully explained in the accompanying Memorandum of Law, the plaintiff's Complaint should be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted against the defendant.

Dated: New York, New York
August 22, 2007

Daniel L. Adams (DA 6891)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **Notice of Motion to Dismiss, Declaration, and Memorandum of Law in Support of Defendant's Motion to Dismiss** was furnished via regular mail to the office of BAKER, LESHKO, SALINE & BLOSSER, LLP, Attorneys for Plaintiff, Linda DiMeglio, One North Lexington Avenue, White Plains, New York 10601, on this 22nd day of August, 2007.

Daniel L. Adams